

ELC 5.3  
**INVESTIGATION OF GRIEVANCE**

**(a) Review and Investigation.** Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, disciplinary counsel may open a grievance in the name of the Office of Disciplinary Counsel.

**(b) Preliminary Request for Response.** Following review of a matter under section (a), disciplinary counsel may request a preliminary written response from a respondent lawyer. If a request for information (1) requests only the respondent lawyer's preliminary written response, and (2) neither includes any other request for specific information nor requests that the respondent lawyer furnish or permit inspection of specific records, files, and accounts, the request is not subject to objection under subsection (i).

**(c) Adjunct Disciplinary Counsel.** Disciplinary counsel may assign a case to adjunct disciplinary counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct disciplinary counsel. On receiving a report of an investigation by an adjunct disciplinary counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

**(d) Deferral by Disciplinary Counsel.**

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

(A) if it appears that the allegations are related to pending civil or criminal litigation;

(B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation; or

(C) if a hearing has been ordered under rule 8.2(a) or supplemental proceedings have been ordered under rule 8.3(a); or

(D) for other good cause, if it appears that the deferral will not endanger the public.

(2) Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, disciplinary counsel refers the matter to a review committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to disciplinary counsel no later than 45 days after disciplinary counsel mails the notice regarding deferral.

**(e) Dismissal of Grievance Not Required.** None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

**(f) Duty To Furnish Prompt Response.** Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.

**(g) Investigative Inquiries.** Upon inquiry or request, any lawyer must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of the lawyer's business records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with investigatory subpoenas under rule 5.5.

**(h) Failure To Cooperate.**

(1) *Noncooperation Deposition.* If a lawyer has not complied with any request made under this rule or rule 2.13(c) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within 10 days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses.*

(A) Regardless of the underlying grievance's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of \$500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to disciplinary counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(f) governs Board review of the review committee order.

(3) *Grounds for Discipline.* A lawyer's failure to cooperate fully and promptly with an investigation as required by this rule or rule 2.13(c) is also grounds for discipline.

**(i) Objections.** Within 30 days of service of an investigative inquiry under subsection (g) of this rule, a lawyer may serve a written objection on disciplinary counsel. An objection is reviewed by motion as provided in rule 5.6.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; January 1, 2015; September 1, 2017.]